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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 JOHN DOE 1, JOHN DOE 2, JOHN DOE
16 3, JOHN DOE 4, JOHN DOE 5, JOHN
17 DOE 6, JOHN DOE 7, JOHN DOE 8,
JOHN DOE 9, JOHN DOE 10, JOHN
DOE 11, JOHN DOE 12, JOHN DOE 13,
and JOHN DOE 14, individually and on
behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 THE UNIVERSITY OF SAN
21 FRANCISCO, ANTHONY N. (AKA
NINO) GIARRATANO, and TROY
22 NAKAMURA,

23 Defendants.

Case No. 3:22-cv-01559-LB

24
25 **PLAINTIFFS' STATEMENT OF RECENT**
26 **DECISION**

27 Plaintiffs John Does 1-14 respectfully submit this Statement of Recent Decision in further
28 support of their Opposition to Defendants' Motions to Dismiss and University of San Francisco's
Motion to Strike (ECF 114, "Opposition"). In their Opposition addressing the University of San
Francisco's Motion to Dismiss, John Does 1-14 argue they plausibly allege a retaliation claim under

1 Title IX, where they engaged in a protected activity by complaining about the Coach Defendants' 2 sexual misconduct and sex discrimination and were retaliated against for engaging in this protected 3 activity. *Id.* at 20 of 36.

4 On June 13, 2023, in *Grabowski v. Arizona Bd. Of Regents*, No. 22-15714 (9th Cir. June 5 13, 2023) ("Op."), attached as Exhibit A, the Court of Appeals for the Ninth Circuit found that the 6 plaintiff sufficiently pled a retaliation claim under Title IX where he alleged that he participated in 7 protected activity by his and his parents' reporting of sexual and homophobic bullying by his 8 teammates to his coaches and team psychologist and that he suffered an adverse action when the 9 coach defendants dismissed him from the track team and cancelled his athletic scholarships in 10 retaliation. Op. at 21-22. The Ninth Circuit also reaffirmed the low threshold for retaliation claims 11 at the motion to dismiss stage, noting that "Plaintiff's retaliation claim is valid even though his 12 discrimination claim is insufficiently pleaded. The protected status of a plaintiff's alleged 13 statements holds whether or not the plaintiff ultimately will be able to prove his or her contentions 14 about discrimination." *See id.* at n.5 (cleaned up).

15 WHEREFORE, Plaintiffs respectfully request that this Court consider the above recent 16 decision and deny USF's motion to dismiss Plaintiffs' Title IX retaliation claim.

17 Dated: June 15, 2023

Respectfully submitted,

18 /s/ Elizabeth A. Fegan
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